HIGH COURT OF CHHATTISGARH AT BILASPUR

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CRIMINAL APPEAL NO.871/2004

APPELLANTS Idris and another

Vs

RESPONDENT State of Chhattisgarh

JUDGMENT

POST ON 11th SEPTEMBER 2007

Sd/-
DHIRENDRA MISHRA
Judge

(29)

HIGH COURT OF CHHATTISGARH AT BILASPUR
CRIMINAL APPEAL NO.871/2004

APPELLANTS

1. Idris, son of Shaukat, aged 28 years, resident of Johwar, P.S. Rura, District Kanpur (UP)
2. Lalji, son of Kanhasen, aged 20 years, Caste-Panika, resident of Karhi-kachhar, P.S. Kargi Road, District Bilaspur (C.G.)

Vs

RESPONDENT

State of Chhattisgarh, through the S.H.O., P.S. G.R.P. Bilaspur (C.G.)

Present:

Mr. N.K.Malviya, Advocate for appellants.
Mr. G.K. Beriwal, Dy. Advocate General for the State.

J U D G M E N T

(Delivered on 11.9.2007)

Per Dhirendra Mishra, J:

1. The instant appeal is directed against the judgment dated 5th October, 2004 passed in S.T. No.210/04 by learned 5th Additional Sessions Judge, Bilaspur whereby the appellants herein have been convicted under Sections 394, 397, 342 of the I.P.C. & Sections 146 & 151 of the Railway Act and each of them has been sentenced to undergo rigorous imprisonment as under:-

Section 394 of IPC	:	R.I. for 5 years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months.
Section 397 of IPC	:	R.I. for 7 years.
Section 342 of IPC	:	R.I. for 3 months.
Section 146 of Railway Act	:	R.I. for 1 month.
Section 151 of Railway Act	:	R.I. for 1 year.

2. Case of the prosecution, in brief, is that on 17.8.2003 at about 11.00 in the night the Station Manager of Salka Road Railway Station namely M. Rambabu (PW-1) was informed that four miscreants are committing robbery in the railway station. On which he reached station where he

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heard the sound of fire, one miscreant caught him and tied both his hands on his back side. They had caught the Station Master also. They were four in numbers and they took both of them to the quarter of M. Rambabu, they entered his quarter and looted CD player and other ornaments valuing Rs.15,000/- from his wife & son and thereafter they locked all the family members inside the house. They took K. Sushitaam (PW-4) to his quarter inside the railway station and there also they committed robbery. He was later on informed that they had snapped the telephone wire of the railway station. They had also robbed Rs.1100/- from the ticket counter. They had also committed robbery in the house of railway employees namely Nazir Mohammed & Chandrakumar.

3. Written report of Ex.P-1 was lodged on 18.8.2003 on the basis of which Dehati Nalishi of Ex.P-2 was registered in G.R.P. Police Station, Bilaspur. During investigation, on 31.8.2003 the appellants were taken into custody on the basis of suspicion. On the memorandum (Ex.P-8) of appellant Lalji looted articles CD player & axe were seized vide Ex.P-10 & P-11 respectively. Similarly, on the memorandum (Ex.P-9) of appellant Idris country made revolver and live cartridges were seized under Ex.P-12, one walkman, camera, ornaments and case of Rs.6,250/- were taken into possession vide Ex.P-13. Test identification parade was held in the Central Jail, Bilaspur on 24.9.2003 by Shri P.C. Kori, Naib Tehsildar, Bilaspur, whereas, identification of seized looted articles was held in Tehsili Office on 19.9.2003 & 15.3.2004 vide Ex.P-5 & Ex.P-4. Apart from the appellants herein during investigation involvement of accused Raees, Nirmala Bai and absconding accused Rambaran Singh was also found and accordingly, after completion of investigation the charge sheet was filed against the appellants and above three accused persons showing accused Rambaran Singh as absconding.

4. The trial court on the basis of statement of M. Rambabu (PW-1), Smt. M. Varlaxmi (PW-2), K. Sushitaam (PW-4), M. Kishore Kumar (PW-5) & Nazir Mohammed (PW-6) has held that the eyewitnesses particularly

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Nazir Mohammed (PW-6) has correctly identified the appellants in the test identification parade. Conviction of appellant Lalji is also based on the recovery of looted CD player on the basis of memorandum of appellant Lalji, as the memorandum & recovery has been proved by Santosh Kumar (PW-3). It has been further held that the looted CD player, which was recovered on the basis of memorandum of appellant Lalji, was duly identified by M. Kishore Kumar (PW-5). However, the trial court has disbelieved the recovery of looted articles on the basis of memorandum (Ex.P-9) of appellant Idris and accordingly, the convicted the appellants as mentioned in Para 1 of this judgment. However, the trial court has acquitted other two accused persons namely Nirmala alias Maharajin & Anil Mishra alias Raees Khan of all the charges.

5. Learned counsel for the appellants argued that the conviction of appellants Idrish & Lalji is based on the statement of eyewitnesses who have correctly identified them in the test identification parade as also on the basis of statement of M. Kishore Kumar (PW-5) and Tehsildar Shri P.C. Kori, who conducted the identification of the looted articles wherein M. Kishore Kumar (PW-5) identified the CD player. Referring to statement of above witnesses it has been argued that M. Rambabu (PW-1) in Para 28 of his statement has stated that after the incident he had gone to G.R.P. Police Station and had seen the accused persons there. K. Sushitaam (PW-4) has also stated in Para 17 & 18 of his deposition that he saw Lalji & Idris in GRP Police Station and 25 days after that he participated in the test identification parade along with other witnesses. M. Kishore Kumar (PW-5) has also admitted that he knew the appellants from the date when he was shown to them by the Inspector in the police station. . Referring to Para 12 of the Statement of Nazir Mohammed (PW-6) it has been argued that before deposing in the case he discussed the case with M. Rambabu who had apprised him about the questions put to him in the court and because of that information he did not go to GRP Police Station. Learned counsel for the appellants has placed his

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reliance on the judgments in the matters of **Ahmed Bin Salam Vs. State of Andhra Pradesh**[1]**; Chittu alias Hemant & others Vs. State of M.P. (Now C.G.)**[2] **& State of Madhya Pradesh Vs. Chamru @ Bhagwandas etc. etc.**[3] . It is also argued that the trial court has heavily relied upon the identification of looted CD player by the witness M. Kishore Kumar (PW-5). However, two CD players mixed with the looted CD player were of different company and therefore, even the identification of CD player is vitiated and as such, the prosecution has utterly failed to prove the involvement of the appellants herein in crime in question and the impugned judgment deserves to be set aside.

6. On the other hand, learned Dy. Advocate General for the State supports the impugned judgment.

7. I have heard learned counsel for the parties and perused the record as also the impugned judgment.

8. M. Rambabu (PW-1) in his deposition before the court has reiterated the allegations present in the FIR. He has categorically stated that out of four persons two had covered their faces with mask. He saw them from a distance of 10 paces. Three out of them went inside his house and after 10 minutes they called them inside the room and thereafter locked them and fled from there. His son informed that apart from jewelry, the dacoits have also looted the CD player of Navrang company. In Para 18 he has stated that he can recognize the persons who had not put on the mask. He had participated in the test identification parade and test identification parade memo of Ex.P-3 bears his signature. He has further stated that the looted articles were put for identification in Tehsili Office, Bilaspur and he had correctly identified the Navrang CD player apart from other articles vide identification memo of Ex.P-4.

9. K. Sushitaam (PW-4) has also stated that on the date of incident he was present in the office, at that time he saw four persons entering the

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[1] AIR 1999 SUPREME COURT 1617
[2] 2005 (2) C.G.L.J. 67
[3] AIR 2007 SUPREME COURT 2400

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office and two of them were holding country made revolver. He raised alarm, however, one of them snapped telephone wire. They enquired about the amount of payment and cash of station. They caught hold of him and tied his both hands from the back side. He has identified the appellants as the persons who were present at the time of incident. Thereafter they asked him to take them to his quarter. On the way, they met Rambabu, they caught him also and thereafter they went to the house of Rambabu and committed robbery. Thereafter they took him to his quarter, entered into his quarter after taking key from his pocket. He has further stated that at the time of incident the tube lights in the station were on and he saw the faces of accused persons in the light and he correctly identified the appellants in the test identification parade conducted by the Tehsildar in Bilaspur jail. He also identified his walkman in the documents of Ex.P-3 test identification memo & identification memo (Ex.P-5) bears his signature.

10. M. Kishore Kumar (PW-5), son of M. Rambabu (PW-1), has also corroborated the statement of Station Master and his father M. Rambabu and stated that dacoits took them near his house and thereafter took him inside his room, they were holding country made revolver, he was forced to open almirah, thereafter accused Lalji took CD player and after completing the robbery the dacoits locked the whole family inside the room from outside and fled from there.

11. Nazir Mohammed (PW-6) has identified two out of the four accused persons in the court. He has stated that on the date of incident at about 11.35 p.m. the bell of his quarter rang, whereupon he opened the door and saw three persons, one of them was holding country made revolver, whereas, others were holding dagger. 4th person was standing outside the house with a Katta. They looted his house on the gun point. They took away ornaments from Almirah. He saw that 4th person was holding CD player in his one hand and Katta in another hand. After committing robbery they locked him inside the room from outside. Out of four, two persons had covered their faces with mask, however, he was able to

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recognize two others who had not covered their faces with mask. In Para 5 he has stated that he recognized the accused/ appellants in the jail and test identification memo (Ex.P-3) bears his signature. He has categorically stated that after the incident he was not called by the police in the GRP Police Station. As already mentioned above that the trial court has relied upon the statement of this witness for the purpose of identification of the appellants and has based the conviction on the statement of this witness.

12. In the matter of Ahmed Bin Salam[1] reported three accused persons came on a scooter and hurled five bombs resulting in injuries to the eye witnesses and death of two persons. Injured eye-witnesses on being asked by the police replied in affirmative, thereafter the accused persons were shown to him for identification and they identified, however, the Hon'ble Apex Court held that it cannot be held to be a test identification parade. In the matter of Chittu alias Hemant[2] this Court considering the fact that alleged eyewitness identified the accused persons in the test identification parade conducted belatedly and also considering that they did not disclose whether the assailants were carrying weapon or not in their hands and one of them claimed that they were beating the deceased with fist and kicks, their testimonies were held wholly unreliable and it was observed that conviction of the accused cannot be based on such identification. In the matter of State of M.P. Vs. Chamru[3] considering the fact that the case of the prosecution was based on the statement of two child witnesses, who have been cited as eyewitnesses and who have identified the accused of murder in the test identification parade, the Hon'ble Apex Court did not consider the test identification parade credible on the ground that the photographs of the accused was shown to the child witnesses before the parade.

13. The trial court relying upon the statement of Nazir Mohammed (PW-6), who correctly identified the accused persons in the test identification parade conducted in the jail and also identified the accused persons during trial, has held him to be a reliable witness, as there is no

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allegation against this witness that he is an interested witness or he has any old animosity with the accused persons.

14. It is settled law that the identification parade did not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines and the identification of the accused during trial is only substantive evidence. In the instant case, Nazir Mohammed (PW-6) has correctly identified the accused persons, during trial, there is no evidence available on record that he had an opportunity to see the accused persons in the police station and therefore, the finding of the trial court that the appellants were identified by the eye witness cannot be questioned. Apart from the identification of the appellants by the eyewitness, the trial court has also relied upon the recovery of CD player on the memorandum of accused Lalji and statement of Santosh (PW-3), witness of memorandum of accused Lalji and recovery of CD player & axe on his memorandum, and held that the appellant Lalji led to recovery of above articles, which was correctly identified by the witnesses in the test identification.

15. Thus, after going through the evidence available on record, this Court is of the considered opinion that the appellants have been convicted by the trial court on the basis of trustworthy and reliable evidence available against them on the record and there is no illegality or irregularity in the impugned judgment, as the same is based on proper appreciation of evidence available on record.

16. In the result, the appeal being devoid of merit is liable to dismissed and the same is hereby dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

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